UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1991/NGO/7
26 July 1991

ENGLISH
Original: SPANISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention
of Discrimination and
Protection of Minorities
Forty-third session
Item 8 of the provisional agenda

REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement submitted by the American Association of Jurists, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[16 July 1991]

1. Economic, social and cultural rights and, in general, the right to development, are enshrined in a large number of international standards (the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights, the Declaration on the Right to Development, etc.). These standards are binding upon the international community, the international organizations (the United Nations and its specialized agencies), on States, on individuals and on corporate bodies subject to private law (American Association of Jurists - E/CN.4/Sub.2/1990/NGO/16 and American Association of Jurists and the International Organization for the Rights and Liberties of Peoples - E/CN.4/1991/12/Add.1).

2. But the existence of international standards which enshrine the right to development and to social progress and their binding nature have not prevented

practices decidedly contrary to such standards from predominating in international economic relations and in the economic and financial policies of many States and some international organizations such as the International Monetary Fund and the World Bank, as is brought out in various international documents including the United Nations World Economic Survey 1990; The State of the World's Children 1989, of the United Nations Children's Fund (UNICEF), The Least Developed Countries 1990 Report, of the United Nations Conference on Trade and Development (UNCTAD) and the 1990 annual report of the Inter-American Development Bank, where it is stated that "adjustment plans have exacerbated problems of poverty, etc".

3. There is thus a situation in which the law is impotent vis-à-vis economic power, and this is becoming worse because the worldwide integration of financial markets and the new technologies (use of computers and electronics for gathering and transmitting of information and for capital transfers) have enabled them to escape control by the States. It should be remembered that, at present, financial markets constitute the crucial component of the world economy since the value of financial flows is 50 times as great as that of the flows of goods. 1/

4. The moment has thus come for the United Nations to prepare standards which make violations of the provisions enshrining the right to development and social progress a crime. As a first step, it would be appropriate for the General Assembly of the United Nations to declare practices and policies of States, institutions and individuals which impede or frustrate the realization of the right to development and social progress, including usury, illegal currency transactions, deregulation of the international monetary system and, in general, the misuse of economic power and of international financial machinery to obtain concessions, advantages or disproportionate benefits at the expense of third parties to be international crimes. Since the Charter of the International Military Tribunal, Nürnberg, and the judgement of the said Tribunal, the international community has been defining various crimes under international law, such as war crimes, crimes against peace, crimes against humanity, the crime of genocide, the crime of apartheid, the crime of recruiting, using, financing and training mercenaries, and so forth. The preamble to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity states, inter alia: "... resolutions 2184 (XXI) of 12 December 1966 and 2202 (XXI) of 16 December 1966 which expressly condemned as crimes against humanity the violation of the economic and political rights of the indigenous population on the one hand and the policies of apartheid on the other ..." (our underlining).

5. The International Law Commission of the United Nations is preparing a draft Code of crimes against the peace and security of mankind and, at its 1989 session, it provisionally approved article 15, among others, which reads "Establishment or maintenance by force of colonial domination or any other form of alien domination contrary to the right of peoples to self-determination as enshrined in the Charter of the United Nations". In the Commentary on that article by the Commission, it is stated that the words "any other form of alien domination" refer to "any foreign occupation or annexation and any deprivation of the right of peoples to choose freely their political, economic or social system ...". It is further stated that certain members (of

the Commission) felt that alien domination included "neo-colonialism" (report of the International Law Commission on the work of its forty-first session (Official records of the General Assembly, Forty-fourth Session, Supplement No. 10) (A/44/10)). Consequently, there can be no doubt whatsoever that economic and financial practices and policies violating the basic standards of international law which cause the deaths of millions of human beings through starvation or curable diseases and cause hundreds of millions to live in subhuman conditions, can perfectly well be defined as crimes under international law, in accordance with the concept of international crime which arises from the existing standards and those projected.

6. It is also becoming more and more necessary for the General Assembly, the Economic and Social Council and certain specialized organs of the United Nations such as UNCTAD to resume the responsibilities that are theirs in attaining the objectives proclaimed in Article 55 and the related Articles of the United Nations Charter. The Economic and Social Council makes annual assessments of world economic trends, but the idea of developing coherent economic policies through the Council has gradually disappeared. The decline in the influence of the Council in this area has been accentuated by the development of the monitoring by the International Monetary Fund (IMF) of the economic policies of its members. "There is no doubt that it was the original intention of the United Nations Charter to give the Economic and Social Council a major role - if not the major role - in this process of achieving greater coherence in global economic policy-making. The United Nations is ideally situated for seeking consistent international policies in the fields of trade, debt, international finance, and the collective management of the world economy ..." 2/

7. In July 1944, the United Nations Monetary and Financial Conference, held at Bretton Woods, decided upon the establishment of the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (World Bank). These institutions had the purpose of promoting exchange stability, stimulating the growth of international trade and facilitating the international circulation of capital. There was an almost inevitable lack of attention to the interests of the developing countries, most of which were still colonies and thus not represented at Bretton Woods. In general, the third world was ignored and little consideration was given to its interests. 3/ In the first article of the Agreement establishing the International Monetary Fund (article I of its Articles of Agreement) the six purposes of the Fund are set out including "to facilitate the expansion and balanced growth of international trade, and to contribute thereby to the promotion and maintenance of high levels of employment and real income and to the development of the protective resources ..." 4/

8. In September 1947, the General Assembly approved without a vote the agreement between the United Nations and the IMF and the agreement between the United Nations and the World Bank, as specialized agencies of the United Nations system. In fact, the agreements constituted rather a declaration of the independence of the two financial organizations rather than one of cooperation with the United Nations. In the discussion on the agreements, held in the Economic and Social Council in August 1947, the

representative of Norway said that the Council would be departing from the provisions of the United Nations Charter if it approved them, adding that his delegation was not prepared to recognize the World Bank as a specialized agency, subject to conditions imposed by the Bank itself. For his part, the representative of the Soviet Union pointed out, in the same discussion, that some provisions of the two agreements violated Articles 57, 58, 62, 63, 64 and 70 of the United Nations Charter. The representative of Venezuela regretted that the agreements had gone further than appeared necessary, particularly article IV, paragraph 3, which advised the United Nations to avoid making recommendations to the Bank concerning loans or the conditions or circumstances of their financing.

9. Since then, all efforts to ensure that the World Bank and IMF coordinate their activities with the Council have proved fruitless, because the two institutions refused to do so, insisting upon their independence. The IMF and the World Bank are extensively represented at meetings not only of the principal organs of the United Nations in the economic and social fields but also of subsidiary bodies and expert groups. On the other hand, the representation of the United Nations in meetings of the Fund and the World Bank has been much more limited and confined to the Annual Meetings of the Boards of Governors and the one-day meetings of the Interim Committee and Development Committee held twice a year. In recent years, the representative of the Secretary-General has been excluded from the private meetings of both Committees. Moreover, the Secretary-General's views can be communicated to the two Committees only in written form. "Thus, while the Managing Director of the Fund and the President of the World Bank make annual addresses to the Economic and Social Council, there is no reciprocity in this regard - a serious asymmetry" 5/. It may thus be concluded that, in practice, the IMF and the World Bank are going beyond the purposes of their establishment and that the agreements of the two institutions with the United Nations and their actual relationship with the Organization do not correspond to the status of specialized agencies, as established by various Articles of the United Nations Charter.

10. The American Association of Jurists suggests that the Sub-Commission on Prevention of Discrimination and Protection of Minorities should, in pursuance of its mandate and, in particular, of various resolutions of the Commission on Human Rights:

1. Prepare a draft declaration for the General Assembly that certain economic and financial practices and policies which violate the right to development and social progress are crimes under international law;

2. Recommend that the Economic and Social Council request an advisory opinion from the International Court of Justice as to whether:

(a) The agreements and the actual relationship between the United Nations, on the one hand, and the International Monetary Fund and the World Bank, as specialized agencies, on the other, are in keeping with the United Nations Charter; and

(b) The policies and practices of the World Bank and of the IMF are in keeping with the purposes of their establishment, as set forth in their statutes, and with the United Nations Charter and other international instruments.

(The Council is empowered to submit to the International Court of Justice legal questions referring to the mutual relationships between the United Nations and the specialized agencies: The International Court of Justice (ICJ) (the Hague), third edition, p. 69).

3. Study ways of increasing the intervention of the Economic and Social Council and the General Assembly in global economic questions and in monitoring their evolution; and

4. Study and propose amendments to the decision-making machinery of the IMF and the World Bank so as to give greater weight to the South, thus adapting the two institutions to the realities of the present-day world.

Notes

1/ Philip King, International Economics and international economic policy: a reader (McGraw-Hill, 1990), p. 433.

2/ Sydney Dell "Relations between the United Nations and the Bretton Woods Institutions" Papers prepared for the North South Roundtable in Uppsala, Sweden, 6-8 September 1989, Uppsala Roundtable on Future Role of the United Nations, p. 32.

3/ South Commission, Desafío para el Sur (The Challenge to the South) (Mexico, Fondo de Cultura Económica, 1991), p. 37 of the Spanish text.

4/ Articles of Agreement of the International Monetary Fund (Washington, International Monetary Fund).

5/ Sydney Dell, op. cit., p. 9.